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WESTERN DISTRICT OF WASHINGTON
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LANE POWELL SPEARS LUBERSKY LLP
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SKY MORTGAGE, INC., a Washington corporation,

Plaintiff,

vs.

SKY BANK, INC., a Washington corporation;
SCOTT RERUCHA; TONY ICASIANO, and
JEFFERY LOW, individuals

Defendants.

No. CO4 0289 P

DECLARATION OF SCOTT
RERUCHA



04-CV-00289-DEC1

Scott Rerucha, hereby states and declares under penalty of perjury, upon his personal testimonial knowledge, that the following is true and accurate to the best of his knowledge:

1. Declarant, Scott Rerucha, is president and majority shareholder of Fortune Services, Inc., a Washington Corporation, formed to do business in the State of Washington as a state-chartered commercial bank under the name and style of "Sky Bank". Fortune Services, Inc. has its principal place of business in Bellevue, King County, Washington. The anticipated main office of the state-chartered commercial

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OSERAN HAHN SPRING & WATTS P.S.
10900 NE Fourth Street #850
Bellevue WA 98004
Phone: (425) 455-3900
Facsimile: (425) 455-9201

ORIGINAL

1 bank known as "Sky Bank" will be Bellevue, Washington. Sky Bank has not yet
 2 received a license to operate by the State of Washington so it has not yet begun using
 3 the name in public.

4 2. Declarant is 41 years of age, has a Bachelor of Arts education in Economics
 5 with a degree from Seattle University in 1986.

6 3. Sky Bank is in its final stages of receiving approval from the Department of
 7 Financial Institutions of the State of Washington for issuance of a charter as a
 8 commercial bank under the laws of the State of Washington. As such, Sky Bank will be
 9 entitled to engage in the general commercial banking business, including commercial
 10 loans of all kinds, personal loans, automobile loans, commercial real estate loans,
 11 residential mortgage loans, credit card issuance, rendition of trust services and probate
 12 services, safe deposit box services, and in general, all aspects of the commercial
 13 banking operation. Sky Bank intends to promote itself as a business bank for small
 14 sized businesses for general commercial banking services. It will have one office with a
 15 focus on business in King, Pierce and Snohomish Counties.

16 4. The name "Sky Bank" was selected by me in complete ignorance of the
 17 existence of an entity known as "Sky Mortgage". While I have been in the residential
 18 mortgage lending business for several years, including in the residential mortgage
 19 lending business in Bellevue and the King County area, I had never heard of Sky
 20 Mortgage. In reviewing the Kevin MacPherson Declaration dated March 11, 2004 filed
 21 in this action, I see that Sky Mortgage has a single office on the fourth floor of a
 22 downtown Bellevue office building with three employees, including staff. In reviewing

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1 the phone directory, I notice that Sky Mortgage has a one-line standard listing under the
2 yellow page category "Real Estate Loans & Contracts" in the Bellevue and Seattle
3 directory with no effort at enhancing the visibility of the name through bold print, colored
4 print, or a large space ad.

5 5. I have been in the commercial banking and the savings and loan banking
6 and/or residential lending/brokerage business for over fifteen years in the State of
7 Washington. For at least two of those years, I have been actively engaged in the
8 residential loan brokerage business in King County. In all of those years, I have never
9 heard of Sky Mortgage in Bellevue, Washington, have never come across it in any of
10 the trade gatherings that I have attended in the residential mortgage industry, and have
11 never seen any advertising or other promotional effort on the part of Sky Mortgage in
12 Bellevue.

13 6. Having been in the commercial or savings and loan banking business for
14 thirteen years in the State of Washington, I am well aware of the breadth of services
15 that can be offered to the public by a commercial bank as compared with the very
16 specific limited services offered by a residential loan mortgage broker. In my
17 experience as both a commercial bank officer and employee and as a residential
18 mortgage loan broker or banker, the reasonable possibility or likelihood of confusion in
19 the mind of the public between the activities conducted by a commercial bank and a
20 residential mortgage loan broker is nil. The reason for this is that almost all members of
21 the public who have sufficient assets and income to entertain a borrowing transaction
22 on a residential property, have experience dealing with commercial banks. They know

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1 what a bank does and what it can offer in the range of services. My experience is that
2 members of the public looking for a residential mortgage loan know that mortgage
3 brokers provide access to markets for funding residential loans and that they have a
4 very narrow but important service to perform. I do not believe, based upon my years of
5 experience, that there is any real likelihood of confusion in the mind of the public
6 between the services that will be offered by Sky Bank and those services presently
7 being offered by Sky Mortgage. While it is true that Sky Bank will offer residential loan
8 banking services, unlike a mortgage broker such as Sky Mortgage, this will be only a
9 part of the overall package of services available to the public.

10 7. There is a fundamental distinction between the business of a "mortgage
11 broker" and a "commercial banker". Mortgage brokers act as a go-between between a
12 prospective residential mortgage borrower and a source of funds to make residential
13 mortgage loans. The broker does not use its own funds to make the loan, it simply
14 places a prospective borrower with an interested lender and assists both in transferring
15 paperwork back and forth to complete the loan transaction. To the contrary, a
16 commercial bank uses its own funds to generate residential mortgage loans, or other
17 loans of personal or commercial nature. It may then sell loans that it generates with its
18 own funds to third parties, such as pension funds or other banks, or to federally-
19 chartered corporation such as FNMA or Freddie Mac. Banks are chartered either by the
20 federal government or the state through separate laws and regulations from those
21 establishing mortgage brokerage organizations at the state level. All loans will be made
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1 with its own money, either for retention as an asset of the bank or for sale to third
 2 parties after the loan transaction is completed.

3 8. Had I been aware that a company doing business in Bellevue as "Sky
 4 Mortgage" existed, I would have made more investigation into the issues that creates,
 5 but I would have firmly believed, as I do now and so state, that the likelihood of
 6 consumer confusion is so small as to be non-existent between a commercial bank
 7 named "Sky Bank" and a mortgage broker named "Sky Mortgage". There is simply too
 8 wide a gulf between the types of business conducted by these very different
 9 organizations as to justify the existence of a real possibility or likelihood of confusion in
 10 the public looking for a residential mortgage loan brokerage service. In going through
 11 the organization and authorization process for Sky Bank, I used that name on both
 12 federal FDIC application forms and on the state banking charter form submitted to DFI,
 13 and neither organization challenged my use of that name as a commercial bank in the
 14 State of Washington. Application for a state charter under the name "Sky Bank" was
 15 made by me through a Washington corporation known as Fortune Services, Inc.

16 9. In reviewing the Kevin MacPherson Declaration, I see that one-half of his
 17 business comes from " . . . leads from real estate agents, . . . and one-half comes from .
 18 . . existing and former customers." This being the case, it is inconceivable that Sky
 19 Bank would confuse real estate brokers and agents making referrals intentionally to Sky
 20 Mortgage. My experience in the residential lending business is that real estate brokers
 21 and agents are provided with lender business cards, brochures and other easily carried
 22 promotional material, and that material is provided by brokers and agent to prospective

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1 purchasers. There would be no chance of confusion in the making of such referrals
2 given the fact that the referral would be to Sky Mortgage at a separate address and
3 separate telephone number in Bellevue. My experience in the residential mortgage
4 lending business tells me that brokers and agents make referrals to specific mortgage
5 brokers because they have had experience in the past with a quick service given to
6 prospective purchasers in obtaining loan commitments and borrower qualification. This
7 is crucial in the real estate broker/agent business and explains why such a large
8 percentage of the Sky Mortgage business comes from broker/agent referrals which
9 would not come to Sky Bank at all. The other half of the Sky Mortgage business
10 according to Mr. MacPherson comes from existing and former customers of Sky
11 Mortgage. This could either mean existing and former customers obtaining new loans
12 or refinances for themselves or the referral of other people by those existing or former
13 customers. This is very common in the residential mortgage business and again would
14 not offer any real likelihood of confusion as the referrals would be made to a business
15 known as "Sky Mortgage" with an address and phone number in Bellevue entirely
16 separate from Sky Bank. I do not believe based on my experience that the chance or
17 likelihood of confusion by the public between Sky Bank and Sky Mortgage exists.
18 Mortgage brokers build a personal client base that does business with the individual
19 brokers. Most mortgage brokers operate very much like independent contractors,
20 building their own client base through promoting their own name, rather than the
21 company name. Referrals from agents and past clients are usually seeking out a
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1 specific mortgage broker, thus confusion would be unlikely. Bank employees usually
 2 promote the bank are the services they provide, not the individual.

3 10. I respond to the Declaration of Greg Schmidt filed by the moving party as
 4 follows: Mr. Schmidt, who called upon me as a salesman for a local title insurance
 5 company when I was in the residential mortgage business in Bellevue, called on me
 6 after I had made the filings with the Department of Financial Institutions for application
 7 for a state charter under the name "Sky Bank". When Mr. Schmidt called upon me,
 8 which was sometime after I had left Bay Mortgage, my previous employer, I had already
 9 begun using the name "Sky Bank in Organization" on correspondence, applications,
 10 news releases, promotional material, and the like (this is allowed by the state prior to
 11 issuance of a charter). Contrary to what Mr. Schmidt said in his initial declaration, he
 12 had told me about Sky Mortgage only long after I had begun using the name "Sky
 13 Bank". When he told me this, I expressed surprise and then said something to him to
 14 the effect that "maybe we could work together". The quote ascribed to me by Mr.
 15 Schmidt in his first declaration is not accurate.

16 11. Supporting my belief that the word "Sky" in both the name of the commercial
 17 bank and the residential mortgage brokerage company will not give rise to consumer
 18 confusion is the fact that in the Seattle and Bellevue area there are yellow page listings
 19 for quite a number of commercial banks and mortgage companies that have the same
 20 first word followed by the word "Bank" or "Mortgage". Examples are "Columbia",
 21 "Sterling", "City", "Evergreen", "Cascade", "Horizon". These and other identical first
 22 word names as seen in the Erik V. Peterson Declaration show that commercial banks

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1 and mortgage brokers with the same first name get along just fine without confusion in
 2 the public. Attached are the Q-West yellow page listings for the Seattle-Metro and
 3 Bellevue-Eastside for Banks and for Real Estate Loans & Contracts.

4 12. Services to be rendered by Sky Bank will not overlap those of Sky Mortgage.
 5 As I have discussed above, Sky Mortgage apparently operates as a small niche
 6 mortgage brokerage, obtaining all of its business from real estate broker/agent referrals
 7 and from existing and former clients. Sky Bank on the other hand will be performing
 8 many commercial banking services for its customers other than residential mortgage
 9 loans, and will be seeking that business from the general public rather than the niche
 10 group that is served by Sky Mortgage. Sky Bank intends to promote all of its banking
 11 services to the public, not just the residential loan service.

12 13. In comparing the proposed Sky Bank logo with that used by Sky Mortgage,
 13 there appears to me to be virtually no similarity at all. A copy of both logos is attached
 14 to this declaration. The Sky Bank logo with two offset facing half circles and pole points
 15 at top and bottom is impossible to confuse with the spelled out word "Sky" with a
 16 depiction of a house elevation between the letters K and Y. I put these two logos next
 17 to each other and see absolutely no basis for confusion.

18 14. Regarding claims of actual confusion, Sky Bank did have a holiday party in
 19 December, 2003. A copy of the invitation is attached. At the time, Sky Bank was not
 20 listed in the white or yellow pages of the Seattle or Bellevue phone directories and had
 21 only very recently moved into office space in South Bellevue as a subtenant of another
 22 business. Sky Bank itself had no signs on the building. Invitations went out in writing

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1 and by personal invite and by word of mouth for this party and it is not surprising
 2 therefore that a few people called Sky Mortgage. The isolated instance of the holiday
 3 party should not demonstrate an ongoing confusion when the circumstances giving rise
 4 to the few calls to Sky Mortgage were unique. That simply will not happen after Sky
 5 Bank is listed in phone directories, has advertising out to the public, has signage on its
 6 building, and its broad range of services become known. Moreover, Mr. MacPherson
 7 does not identify the names of the people that called or that he was the person taking
 8 the calls. Fortune Services, Inc. (which will ultimately become Sky Bank when the
 9 authorization is received from the State of Washington) moved its office space from one
 10 area of Bellevue to another area of Bellevue in October, 2003. Since Sky Bank is
 11 unable to advertise its location by signage, telephone numbers, or otherwise, it is
 12 possible that the relocation could have led to some confusion by people attempting to
 13 contact me regarding the formation of Sky Bank. When Sky Bank has addresses and
 14 phone numbers published in directories and in advertising, these very isolated and
 15 unique occurrences will cease. Mr. MacPherson simply speculates on the call for an
 16 individual who did not work at Sky Mortgage. That call proves nothing.

17 15. In my experience of several decades in the residential loan business, I have
 18 become aware from dealing directly with prospective borrowers and lenders that
 19 borrowers are generally sophisticated persons, have assets, have income, and are
 20 aware of the importance of the transaction they are entering into. I have never
 21 experienced a residential mortgage loan borrower treating the transaction similarly to
 22 buying a can of paint at the hardware store or, indeed, buying an automobile from a

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1 dealer. The effort involved in a residential mortgage loan is considerable (the
2 paperwork itself can be overwhelming to most borrowers) and not something a borrower
3 enters into by accident. The fact that Sky Mortgage depends on a standard single line
4 entry for its business in the Seattle and Bellevue yellow pages demonstrates that it does
5 not depend on "drop-in" or "cold-call" customers (remember, Sky Mortgage is on the
6 fourth floor of an office building in downtown Bellevue – also not exactly a "drop-in"
7 location). Customers for residential loan services simply do not go to the effort of filling
8 out and submitting loan applications and providing financial information and other
9 necessary information without having a reason to seek out a specific provider of that
10 service. In my experience, prospective borrowers do not find lenders or brokers for
11 residential loans by happenstance.

12 16. It is the intention of Sky Bank to focus its business activities on the eastside
13 of Lake Washington. Expansion into a multi-branch commercial banking operation is
14 possible over a period of years. Expansion, however, can only occur if Sky Bank
15 emphasizes all of the elements of commercial banking it can make available to the
16 public, in which residential loan services is only a part. Sky Bank will promote itself as
17 a commercial bank that can originate residential loans, not as a residential mortgage
18 broker only.

19 I certify, under penalty of perjury, under the laws of the State of Washington that
20 the foregoing is true and correct.

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OSERAN HAHN SPRING & WATTS P.S.

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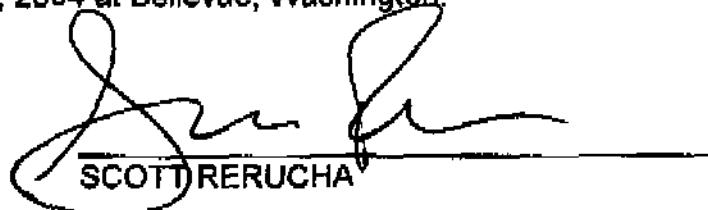
Bellevue WA 98004

Phone: (425) 455-3800

Faxsimile: (425) 455-9201

1 DATED this 5 day of April, 2004 at Bellevue, Washington.

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SCOTT RERUCHA

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SKY BANK



SKY BANK
In organization
&

PINNACLE LENDING GROUP

Cordially invite you to
A Holiday Celebration

Thursday, December 11
4:00 pm to 7:00 pm
11235 SE 6th Street
Bldg. A Suite 200
Bellevue, WA 98004-6433

Wine & Hors d'vours

RSVP 425-562-8272
by 12/4/2003

FORTUNE SERVICES, INC.

Scott Rerucha

11235 SE 6th Street
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